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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,944	01/09/2002	Vito James Carlucci	884.0051USU	5138

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EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/040,944	Applicant(s) CARLUCCI ET AL.	
	Examiner Jimmy G Foster	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1) Replacement Drawing Figure 5 is objected to and has not been entered since it includes new matter. For example, which there is support for the slidable connector and the abutments, there is no original disclosure that they would have the configurations shown.

2) The amendments to the specification, pages 7 and 8, have not been entered since they do not conform to 37 CFR 1.121 regarding amendment to the specification. Had the changes been entered, they would have been objected to as adding reference numerals which have no correspondence in the drawings (since Replacement Figure 5 was not entered).

3) The drawings are objected to under 37 CFR 1.83(a) as failing to show the slidable connector and abutments which are claimed in claim 13-16. It is noted that in the specification description it is stated that the slidable connector and abutments are not shown. Correction is required by either canceling the subject matter in the claims or providing the subject matter in the drawings without providing any new matter to the disclosure. (It is not clear that it will be possible to appropriately amend the drawings to provide the slidable connector and abutments without providing some new matter.)

4) Claims 13-16 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to sufficiently describe the invention claimed in claims 13-16 so as to enable one of ordinary skill in the art to make the invention claimed without undue experimentation. There is insufficient description with regard to how

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to make the slidable connector, how to connect the connector to the base, and how to dispose the slidable connector with the two abutments so that it cooperates with the two abutments claimed.

5) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6) Claims 1-3 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Bomeisler et al (Des. 216,349) in view of Box (3,282,462). In the reference of Bomeisler et al, there is provided a portable heater housing for hair curlers which includes plural curler/roller supports (see Fig. 2) and a lid which includes two sections that are individually hinged to the housing, as indicated in the figures of drawing. Upon closure of the lid sections, they abut/seal at a mid-line between opposed sides of the device.

It is noted that no advantage is indicated in Applicant's disclosure for a single lid section pivot, as opposed to multiple pivots.

Although each of the lid sections of Bomeisler et al is pivotally attached to the housing at a pair of pivots on opposed walls, the reference of Box at 22 suggests that each of the lid sections of a container/case may be respectively pivotally attached by a single pivot, opposed to the free end of the section. As shown in Figures 2 and 3 of Box and as indicated in column 2, lines 52-57, this would apparently provide room for side

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strengthening ribs in the adjacent walls of the container, which provide improved mechanical stability and resistance to forces and loads.

Accordingly, it would have been obvious in view of Box to have formed the lid sections of Bomeisler et al for single pivot connection (opposed to the free end) and to have made each lid section thereby pivotally connected to the housing along a single pivot, so as to permit room for strengthening ribs in adjacent container walls for providing stability and force resistance in the container.

7) Claims 1-5 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041) in view of Box (3,282,462). In the reference of Montagnino et al there is provided a housing for a hair setter, including a housing/lower portion, and a pair of opposed lid sections. The lid sections are hingedly attached at opposite ends and abut/seal along a mid-line when in the closed condition. The bottom of the lower portion is capable of supporting hair rollers. The lid sections define a handle element; accordingly, the housing is portable. On each side of the handle element, the lid sections include channels that are capable of directing condensation into the reservoir/volume of the housing.

It is noted that no advantage is indicated in Applicant's disclosure for a single lid section pivot as apposed to multiple pivots.

Although each of the lid sections of Montagnino et al is pivotally attached to the housing at a pair of pivots on opposed walls, the reference of Box at 22 suggests that each of the lid sections of a container/case may be pivotally attached by a single pivot, opposed to the free end of the

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section. As shown in Figures 2 and 3 of Box and as indicated in column 2, lines 52-57, this would provide room for side strengthening ribs in the adjacent walls of the container, which provide improved mechanical stability and resistance to forces and loads. Accordingly, it would have been obvious in view of Box to have formed the lid sections of Montagnino et al for single pivot connection (opposed to the free end) and to have made each lid section thereby pivotally connected to the housing along a single pivot, so as to provide room for strengthening ribs in adjacent container walls for providing stability and force resistance in the container.

8) Claims 4 and 5 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des 323,041 described above) in view of Box (3,282,462) as applied to claim 1, and further in view of Jensen et al (3,700,855). The reference of Jensen et al, at 7,8 and at column 1, lines 12-18 and column 2, line 65 through column 3, line 23, suggests that an enclosure for curlers may includes a steaming means and that the underside of a lid of an enclosure for curlers/rollers may include channels (pyramidal shapes 7,8) that direct/channel condensation to the reservoir of the housing/casing, for the purpose of wetting curlers/rollers in the reservoir and recirculating humidity within the enclosure. Jensen et al also suggests providing plural roller supports for providing rollers at locations to receive the condensation. This permits providing moist curlers to the hair. Accordingly, it would have been obvious in view of Jensen et al to have provided the lid of the housing of Montagnino et al with condensation channels and to have provided the housing with a steaming means and plural

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roller supports, for the purpose of wetting the curlers/rollers and recirculating moisture within the housing.

9) Claims 6-12 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041 described above) in view of Bogan et al (2,659,920). The reference of Bogan et al, at 7,12,14 and Figure 1, suggests that a container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided, having means (spaced concave members 14) for connecting the base to the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user, for the purpose of improving access to the contents of the container through the opening of the container. Accordingly, it would have been obvious in view of Bogan et al to have made the container of Montagnino et al with a base connected to the housing so as to tilt the container on the base, for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing.

10) Claims 6-12 are finally also rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041 described above) in view of Jensen (3,700,853) as applied to claim 5 above, and further in view of Bogan et al (2,659,920). The reference of Bogan et al, at 7,12,14 and Figure 1, suggests that a container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided with means (spaced concave members 14) for connecting the base to

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the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user, for the purpose of improving access to the contents of the container through the opening of the container. Accordingly, it would have been obvious in view of Bogan et al to have made the container of Montagnino et al with a base connected to the housing so as to tilt the container on the base, for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing.

11) Claims 9-12 are also finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041). In the reference of Montagnino et al there is provided a housing for a hair setter, including a housing/lower portion, and a pair of opposed lid sections. The lid sections are hingedly attached at opposite ends and abut/seal along a mid-line when in the closed condition. The bottom of the lower portion is capable of supporting hair rollers. The lid sections define a handle element; accordingly, the housing is portable. On each side of the handle element the lid sections include channels that are capable of directing condensation into the reservoir/volume of the housing.

While the claims call for support for pivotal movement of the housing with respect to the base, there is not limitation requiring a connection between the housing and base. The bottom of the housing of Montagnino et al is provided with feet, as indicated in Figures 4-6. This suggests resting the housing on a supporting surface/base, such as a table or counter, such that it would have been obvious from the feet to have rested the housing on

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such a supporting surface/base. Inasmuch as the transition between the longitudinal housing sides and the housing bottom is rounded, the examiner asserts that the housing is capable of being pivoted with respect to such a supporting surface or base.

12) Claims 13-16 distinguish over the subject matter in the prior art.

13) Applicant's arguments filed April 10,, 2004 have been fully considered but they are not deemed to be persuasive. Applicant has argued that the lid sections of Box (as applied to Bomeisler et al) are not mounted but are to the carrying case but are integrally molded to the case. The examiner disagrees since the term "mounted" is broad enough to mean "fixed" and therefore does not require initially separate elements to be attached.

Applicant has argued that the lid sections of Box are not each attached by a single pivot since each of the hinges includes slots and therefore constitutes multiple pivots. The examiner responds that the reference of Box discloses at least two other manners of forming the hinges: by reducing material thickness (col. 3, lines 73-75), and by providing a series of spaced depressions (col. 4, line 9-11).

Applicant questions the motivation stated in the rejection regarding modifying Bomeisler et al in view of Box to provide room for side strengthening in the adjacent walls of the container. The examiner responds that Box teaches providing strengthening ribs, such as 11d, and teaches by example providing the single pivot hinges for the lid sections at the top of

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the container, thereby providing room for the ribs to be provided on the adjacent walls, such as wall 11.

Applicant questions the stated motivation by pointing out that there would be no need for strengthening ribs in a container for hair rollers as there would be for a container (such as in Box) for carrying bottles. The examiner responds that the strengthening ribs of Box are for protecting the contents of the container from outside forces and would be pertinent to the protection of rollers as well as to any other content.

The argument by Applicant that the pivots of Box on the lids of Bomeisler et al would destroy the operation of Bomeisler et al conveniently disregards that actual statement of the rejection, "to have formed the lid sections of Bomeisler...."

Applicant's arguments (regarding claim 3) that the neither Bomeisler et al nor Box teach a seal along the mid-line from front side of the housing to rear side of the housing they do not teach a seal transverse to the longitudinal axis, is an argument not sufficiently supported in Applicant's claim. Claim 3 of Applicant does not call for a seal to be transverse to the longitudinal axis of the housing. Claim 3 does not call for an elongated housing. Accordingly, insofar as claimed, the front and rear sides of the containers in Bomeisler et al and Box could be the sides transverse to the hinges.

The argument that an advantage is disclosed by Applicant regarding the split lid arrangement, allowing selective access while reducing heat loss, is acknowledged. This however does not explain why Applicant uses single pivots instead of multiple pivots.

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The following argument beginning at the bottom of Applicant's page 14 makes, with respect to the rejection made, is not understood:

Furthermore, were more than two lid sections each having multiple pivots at opposite sides of the housing provided, the Montagnino et al. design patent, would be in operable because the lid sections would overlap.

Applicant further argues that the channels that the channels of Montagnino et al would not direct condensation to the reservoir of the housing but outside the housing onto the supporting surface. The examiner disagrees since the channels on each side of the handle of Montagnino et al have vertical interior surfaces. Sufficient condensation collecting on these vertical interior surfaces will fall under the weight of the condensation into the reservoir (interior) of the housing, not outside of the housing.

The apparent argument that the pyramidal structure in the lid of Jensen et al does not constitute channels is incorrect since the pyramids channel/direct condensation to the interior of the housing.

The argument that references of Montagnino et al and Box are not concerned with the collection condensation in the housing is without merit, sense the Jensen et al reference provides a teaching of doing this that would have been reasonably pertinent with respect to the curler assembly of Montagnino et al, and since the reference of Box is employed I the rejection for a teaching unrelated to condensation.

The argument that the assembly of Montagnino et al appears to use dry heat is clearly not supported from the reference and is not explained with

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any reasoning. Therefore, the position that one of ordinary skill would not modify Montagnino et al in view of the suggestion of Jensen et al is without merit.

The examiner does not agree with Applicant's argument that there is no motivation to combine the teaching of Bogan with the container of Montagnino et al. The motivation is to provide better access to the contents of a container.

The argument that the Bogan et al container is smaller than the container of Montagnino et al does not show how a teaching for providing better access is inapplicable to a larger container.

Applicant has argued that the feet of Montagnino et al only suggest placement on a flat surface and not a base. The examiner responds that a flat surface is a base.

Applicant has argued that the reference of Bogan et al does not have a horizontal axis of rotation. The examiner disagrees since the horizontal axis is through the centers of the facing concave sections of the upright members 14,14 of Bogan et al.

Applicant has argued that the lid sections of Montagnino are connected on the same side and not on opposite sides. The examiner responds that the lid sections of Montagnino et al are connected both on the same side and opposite sides insofar as Applicant has claimed (claims 9-12).

Applicant's argument that the reference of Montagnino et al does not suggest pivotal movement on a base is correct. However, in as much as the container is capable of performing the pivoting, the reference meets Applicant's claimed intended use in this regard.

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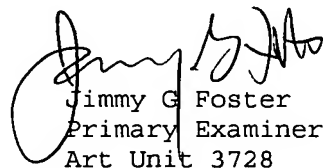
14) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

15) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728